

J<sup>1</sup>  
cont.  
*Bifidobacterium* spp., *Staphylococcus* spp., *Micrococcus* spp., *Bacillus* spp.,  
*Enterobacteriaceae* spp. *Actinomycetes* spp., *Corynebacterium* spp. and  
*Brevibacterium* spp.

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J<sup>2</sup>  
23. (Twice amended) A starter culture composition according to claim 22  
which further comprises at least one component enhancing the viability of the starter  
culture composition during storage, including a bacterial nutrient or a cryoprotectant.

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J<sup>3</sup>  
32. (New) A method according to claim 9 wherein the bacterial culture is *E.*  
*coli*.

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#### REMARKS

##### I. CLAIMS 9 AND 23 ARE AMENDED

Claim 9 is amended to improve its form. New claim 32 is directed to the subject  
matter previously present in claim 9.

Claim 23 is amended to render it consistent with claim 22, amended in the  
Supplemental Amendment. The amendment does not introduce impermissible new  
matter and is not directed to any matters relating to patentability of claims 9 or 23.

##### II. APPLICANTS REITERATE TRAVERSAL OF THE ASSERTION OF LACK OF UNIT OF INVENTION OF CLAIMS 18-23

Applicants incorporate by reference all the arguments contained in Amendment  
Under 37 C.F.R. § 1.111 traversing the indication in the Office Action that claims 18 and  
19 of Group II were known in the prior art and therefore all claims of Group II (claims 18-  
23) do not constitute a special technical feature as defined by PCT Rule 13.2.

Additionally, Applicants wish to point out that at least because claims 18 and 19  
are patentable in view of Johansen et al. (*Dev Biol Stand* 85:531-34) and Dickely et al.

(*Mol Microbiol* 15:839-847), claims 18-23 share the same special technical feature as claims of Group I (claims 1-17 and 24-31). This is emphasized by 37 C.F.R. § 1.475(b) which indicates, in pertinent part, that:

...a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) ...
- (2) A product and a process of use of said product; ...

Please also see, *Caterpillar Tractor Company v. Commissioner of Patents and Trademarks*, 590 USPQ 231 (DC, E.D. VA 1986) wherein the court held that a U.S. national stage of a PCT application containing claims directed to a process and apparatus for its practice must be examined in the same application since they satisfy the requirement of unity of invention of the PCT Rules.

Furthermore, it was indicated in the International Search Report and in the International Preliminary Examination Report that Unity of the Invention according to Rule 13 PTC has been fulfilled. Thus, claims of Group II (claims 18-23) should be considered to share the same special technical features as claims of Group II (claims 1-17 and 24-31) and the Lack of Unit objection should be withdrawn.

### III. REQUEST FOR ALLOWANCE

All claims are in condition for allowance, an indication of which is solicited. In the event any outstanding issues remain, Applicants would appreciate a telephone call to their undersigned counsel to resolve such issues in an expeditious and effective manner.

It is believed that no fees are due in connection with this Second Supplemental Amendment. However, if any additional fees are determined to be due, the Director is hereby authorized to charge such fees to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

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APPENDIX A

9. (Once amended) A method according to claim 1 wherein the bacterial culture is selected from the group consisting of *Lactococcus* spp., *Lactobacillus* spp., *Leuconostoc* spp., *Pediococcus* spp., *Streptococcus* spp., *Propionibacterium* spp., *Bifidobacterium* spp., *Staphylococcus* spp., *Micrococcus* spp., *Bacillus* spp., *Enterobacteriaceae* spp. [including *E. coli*] *Actinomycetes* spp., *Corynebacterium* spp. and *Brevibacterium* spp.

23. (Twice amended) A starter culture composition according to claim 22 which further comprises at least one component enhancing the viability of the [bacterial] starter culture composition during storage<sub>1</sub> including a bacterial nutrient or a cryoprotectant.

32. (New) A method according to claim 9 wherein the bacterial culture is *E. coli*.